

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:15-CV-183-BO

SANDRA ELLIOTT and LEARNING
LINKS EDUCATIONAL CENTER
Plaintiffs,

v.

UNITED STATES MARSHAL SERVICE,
TRICARE HEALTHNET SERVICES, and
NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
Defendants.


ORDER

This matter comes before the Court for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). On May 15, 2015, United States Magistrate Judge Robert B. Jones, Jr. granted plaintiff's motion for leave to proceed *in forma pauperis*. A claim proceeding *in forma pauperis* may be dismissed at any time if it is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Under the Prisoner Litigation Reform Act (PLRA), a court may dismiss a prisoner's action "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief can be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). *See also Tolbert v. Stevenson*, 635 F.3d 646, 650 (4th Cir. 2011); *Altizer v. Deeds*, 191 F.3d 540, 544 (4th Cir. 1999) (§ 1915(g) referred to as "three strikes" provision of PLRA).

Plaintiff has previously brought at least three actions in the Eastern District of North Carolina that have been dismissed as frivolous. *See, e.g., Elliott v. Johnson Lexus of Raleigh*, 5:14-CV-501-F (dismissed for failure to state a claim upon which relief may be granted on November 24, 2014, motion to reconsider denied on December 3, 2014); *Elliott v. Baggett*, 5:14-CV-17-BO (dismissed as frivolous on March 2, 2015, motion to reconsider denied on April 16, 2015); *Elliott v. Computer Sciences Corp.*; 5:13-CV-348-D (dismissed as frivolous on March 17, 2014). Having considered plaintiff's complaint and finding no suggestion that plaintiff is in any imminent danger of serious physical injury, the Court DISMISSES WITHOUT PREJUDICE this action pursuant to 28 U.S.C. § 1915(g). The clerk is DIRECTED to close this case.

SO ORDERED, this 9 day of June, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE